IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Criminal Revision No. 401 of 1998
Bholu Ram Vs. State of Punjab and another

AND

Criminal Revision No. 402 of 1998
Bholu Ram Vs. State of Punjab and another

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PRESENT: Mr. D.D.Sharma, Advocate for petitioner.
Mr.G.S.Bhandari, Deputy Advocate General, Punjab
for respondent No.1.
Mr. S.S.Behl,Advocate for respondent No.2.

Date of decision: November 27,2006.

JUDGMENT

M.M.Aggarwal, J.

Bholu Ram petitioner, who was facing trial in case FIR No.87 dated 21.8.1986 of Police Station Tappa, had filed aforesaid two petitions. Both are against judgment/order dated 6.5.1996 of Additional Sessions Judge, Barnala.

Facts of the case are that FIR No. 87 dated 21.8.1986 at Police Station Tappa was registered at the instance of Sher Singh. Bholu Ram was a Clerk in Government High School,Rureke Kalan and Sher Singh was the Head Master and drawing and disbursing officer. Police after investigating the case had presented challan against Bholu Ram for offence under Sections

409/420/467/468/471 IPC. The trial had started. When all the evidence was complete and the case was fixed for defence evidence and even for arguments, then Bholu Ram had made application under Section 319 Cr.P.C. for proceeding as against Sher Singh. That application was allowed by Judicial Magistrate Ist Class, Barnala vide order dated 22.1.1996. A revision petition was filed by the State against that order which was dismissed by Additional Sessions Judge, Barnala on 6.5.1996. Thereafter, Sher Singh (the person concerned) filed another application for reviewing the summoning order dated 22.1.1996, which was dismissed as not maintainable on 12.3.1997 since earlier revision petition against the same order was dismissed by Additional Sessions Judge on 6.5.1996. Against that order dated 12.3.1997, Sher Singh filed a revision petition which was accepted by Additional Sessions Judge vide impugned order dated 5.3.1998. The Additional Sessions Judge also held that sanction under Section 197 Cr.P.C. was necessary for prosecuting Sher Singh and, therefore, he could not be proceeded with if sanction was not there.

Bholu Ram filed two separate revision petitions – one against order whereby application under Section 319 Cr.P.C. was dismissed and the other whereby it had been held that prosecution could not be launched against Sher Singh without sanction under Section 197 Cr.P.C.

Counsel for petitioner Bholu Ram had argued that once revision petition filed by the State against an order under Section 319 Cr.P.C. was dismissed, then Sher Singh had no right to file application for review of the order dated 22.1.1996 of the Magistrate whereby application under Section 319 Cr.P.C. was allowed. It was argued that it was Sher Singh who had committed the offence and present petitioner was falsely involved.

This case was registered in the year 1986. Bholu Ram was

challaned by the police. In fact the FIR had been got registered by Sher Singh. All the prosecution evidence had been recorded as against Bholu Ram. Defence witnesses had been examined. Sher Singh had appeared as a prosecution witness in the case. However, when case was fixed for defence evidence and arguments, then only this application under Section 319 Cr.P.C. was made by Bholu Ram, who was the main accused . Application was not made by the State.

It is doubtful whether Bholu Ram who was himself accused, could make an application for proceeding under Section 319 Cr.P.C. as against Sher Singh. Even if he could file the application, still when the prosecution evidence was already closed and statement under Section 313 Cr.P.C. was even recorded, would itself be a good ground to deny such request under Section 319 Cr.P.C. especially when it was made by one of the co-accused. This application was filed after 7-8 years of recording of the FIR for many years of start of trial and after all the prosecution witnesses had been examined.

When FIR was registered at the instance of Sher Singh, who was Headmaster of the School, he could naturally take a plea that prosecution against him was barred under Section 197 Cr.P.C. and the Additional Sessions Judge had rightly concluded that prosecution could not be launched without sanction under Section 197 Cr.P.C.

In the aforesaid circumstances, there is no merit in these revision petitions and the same are dismissed.

(M.M.Aggarwal)
Judge

November 27, 2006
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